

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

**FILED
SCRANTON**

OCT 24 2012

RICHARD BROWN and
ARTHUR JOHNSON,

Plaintiffs,

v.

KEVIN SMITH and
C.O. C.R. TREECE,

Defendants.

PER M. E. K.
DEPUTY CLERK

CIVIL ACTION NO. 1:12-CV-446

(Judge Kosik)

MEMORANDUM AND ORDER

AND NOW, this 24th day of October, 2012, IT APPEARING TO THE
COURT THAT:

(1) Plaintiffs, Richard Brown and Arthur Johnson, prisoners and cellmates confined at the State Correctional Institution at Smithfield, Huntingdon, Pennsylvania, filed the instant civil rights action pursuant to 42 U.S.C. §1983 on March 12, 2012. An Amended Complaint was filed on July 9, 2012 (Doc. 22);

(2) In their Amended Complaint, Plaintiffs raise a violation of due process claim and denial of access to the courts claim based on the confiscation of property from their cell;

(3) The action is now assigned to Magistrate Judge Martin C. Carlson for Report and Recommendation;

(4) On September 25, 2012, the Magistrate Judge issued a Report and Recommendation (Doc. 27) wherein he recommended that Plaintiffs' claims for due process be dismissed in that Plaintiffs had an adequate post-deprivation remedy available to them through the grievance system; the denial of access to the courts claim be dismissed for failure to plead an actual injury; and that Plaintiffs be allowed to file a second amended complaint as to the denial of access to the court claim;

(5) Plaintiffs have failed to file timely objections to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(6) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a *de novo* review of his claims. 28 U.S.C.A. §636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987);

(7) We have considered the Magistrate Judge's Report and we concur with his recommendation. We agree with the Magistrate Judge's finding that Plaintiffs have failed to set out a due process claim regarding the confiscation of property and that Plaintiffs should be given an opportunity to amend the denial of access to the court claim;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Martin C. Carlson dated September 25, 2012 (Doc. 27) is **ADOPTED**;

(2) The Defendants' Motion to Dismiss the Amended Complaint (Doc. 24) is **GRANTED**;

(3) The Plaintiffs' claims for denial of due process based on confiscation of property and access to the courts are **DISMISSED**; however, Plaintiffs are allowed fourteen (14) days from the date of this Order in which to file a second amended complaint on the denial of access to the court claim;

(4) Plaintiffs are advised that failure to file a timely second amended complaint will result in dismissal of this action; and

(5) The above-captioned action is **REMANDED** to the Magistrate Judge for further proceedings.



Edwin M. Kosik
United States District Judge